BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

B. C. PRINGLE
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-14
Case No. 68-326

S.S.A. No. ---

BROTHERS TRANSPORTATION, INC.
(Employer-Respondent)

Employer Account No.

The claimant appealed from Referee's Decision No. LA-14151 which held that the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code commencing November 12, 1967, and that the employer's reserve account is relieved of benefit charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant was last employed by the above named transportation company as a truck driver at a rate of $3.35 per hour for approximately 11 months until November 7, 1967, at which time his employment terminated under circumstances hereinafter set forth. He has been a truck driver for about 27 years.

On January 11, 1967, the claimant, while delivering a load of concrete pipe to an orange grove, was involved in an accident due to the fact that he failed to properly secure the load on the truck. The truck tipped and the load of pipe fell off the truck, causing damage in an amount of approximately $1,200.00.

The second accident in which the claimant was involved occurred on March 21, 1967, when the claimant lost control of the truck while going south at approximately 20 miles per hour on Highway 99, going uphill at the Grapevine section. His truck left the road and toppled off an embankment. A fire ensued with resulting damage amounting to approximately $35,000.00. It was not determined whether a tire had or had not blown causing the truck to leave the road. The employer is an experienced truck driver. He testified that it was his opinion that even if a tire had blown, the claimant was negligent in allowing the accident to occur, because the claimant was driving uphill at a relatively slow speed and there was ample space between the lane in which the truck was being driven and the curbing to keep the truck under control. The insurance carrier which had covered the employer's vehicles up to that point cancelled the employer's insurance policy because of the bad history of accidents. The employer then obtained insurance from another carrier at higher premium rates.

On April 13, 1967, the claimant, while driving the employer's truck, struck a light standard in the city of Alhambra, with resulting damage in an amount of approximately $84.00. This amount was paid by the insurance carrier.

On November 3, 1967, the claimant was involved in another accident in which he sideswiped an automobile parked at a customer's place of business in Pomona. The damage on this occasion was approximately $50.00.

On November 7, 1967, the claimant was returning on the Coast Highway from a delivery made at Point Hueneme. He had no load in the truck at the time. The claimant came up over a rise in the road and observed an automobile in front of him. The driver of the automobile applied the brakes and then released the brakes. The claimant was planning to get into the inside lane and pass this car but noted that a car traveling behind him in the same direction was proceeding on the inside lane. The claimant's truck struck the rear of the automobile in front of him, injuring the driver of the automobile seriously and causing property damage amounting to about

$1,200.00. The insurance carrier has set up a reserve of $10,000.00 for the bodily injury to the driver of the automobile and the carrier is concerned that this reserve may not be sufficient to cover the ultimate liability.

The police were called to the scene of the accident of November 7 and a citation was issued to the claimant for violation of the Vehicle Code. He paid a fine of $31.00.

The employer notified the insurance carrier of the accident on November 7, 1967, and the insurance carrier informed the employer verbally, and later by letter, that it considered the claimant's accidents of March 21 and April 13, 1967 to have been due to the claimant's negligence. As a result of the accident of November 7, 1967, the carrier was obliged to ask the employer to dismiss the claimant as a driver or it would have no alternative but to ask for a sizeable increase in the premium rate or the employer's alternative choice of voluntarily canceling the policy. The employer decided to discharge the claimant and he states that he would have discharged the claimant because of his accidents regardless of whether the carrier had insisted that the claimant be discharged.

REASONS FOR DECISION

Section 1256 of the code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges if the claimant has been discharged for misconduct connected with his most recent work.

In approving the definition of "misconduct" stated by the court in Boynton Cab Company v. Neubeck (1941), 237 Wis. 249, 296 N.W. 636, the court in Maywood Glass Company v. Stewart (1959), 170 Cal. App. 2d 719, 339 P. 2d 947, held that the term "misconduct," as it appears in section 1256 of the code is limited to conduct which shows wilful or wanton disregard of the employer's

interest, such as deliberate violations of or deliberate disregard of the standards of behavior which the employer has a right to expect of his employee, or carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. On the other hand, the court continued, mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not "misconduct." The court also held that the employer has the burden of establishing "misconduct" to protect its reserve account.

The term "misconduct" does not necessarily imply an evil or corrupt motive or an actual intent to injure or damage an employer's interests. It is sufficient if the act, or the failure to act, on the part of the employee be committed or omitted under such circumstances as would justify the reasonable inference that the employee should have known that injury or damage to his employer's interests was a probable result (Benefit Decision No. 5842).

In Appeals Board Decision No. P-B-3 we summed up the meaning of "misconduct" as follows:

> "Misconduct connected with the work then consists of four elements:
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> "(1) A material duty owed by the claimant to the employer under the contract of employment;
> "(2) A substantial breach of that duty;
> "(3) A breach which is a wilful or wanton disregard of that duty; and
> "(4) Evinces a 'disregard of the employer's interests,' i.e., tends to injure the employer."

The State of Pennsylvania has a line of reported court decisions which sets forth clear and logical guide lines for determining whether misconduct exists where a claimant has been discharged following a series of accidents while driving a vehicle. The leading case is

Allen v. Unemployment Compensation Board (1951), 168 Pa. Super. 295, 77 A.2d 889. Pennsylvania follows the Boynton Cab Company case definition of "misconduct" (see Commerce Clearing House Unemployment Insurance Reporter, Pennsylvania, paragraph 1970).

In the Allen case, the claimant was a taxi driver for 21 months, during which he was involved in eight traffic accidents. Most were of a minor degree. The employer incurred $555.00 in expenses on account of the accidents. The last accident was the most serious; a collision with another automobile at an intersection resulted in a $75.00 payment to the passenger in the taxi, and the claim of the other driver remained unsettled as of the time the court rendered its decision. In holding that the claimant was discharged for misconduct and not entitled to unemployment benefits, the court stated:

> "'Willfulness exists where the injury to the employer, though realized, is so "recklessly disregardful" that, even though there be no actual intent, there is at least a willingness to inflict harm, a conscious indifference to the perpetration of the wrong'. Sabatelli v. Unemployment Compensation Board of Review, Pa.Super., 76 A.2d 654, 656 . . . .
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> "Of course, a single dereliction or minor and casual acts of negligence or carelessness do not constitute willful misconduct. But a series of accidents, attributable to negligence, occurring periodically and with consistent regularity, which produce substantial financial loss to the employer, will support the conclusion that the employe has recklessly or carelessly disregarded his duties, or has been indifferent to the requirements of his occupation, and is therefore guilty of willful misconduct. This accurately describes the situation in which the board found appellant, and it properly denied his claim to benefits."

Shirley v. Unemployment Compensation Board of Review (1962), 198 Pa.Super. 296, 181 A.2d 709, is to the same effect as the Allen case.

In Atlantic Freight Lines, Inc. v. Unemployment Compensation Board of Review (1958), 188 Pa.Super. 189, 146 A.2d 333, the claimant was employed as a truck driver for approximately 11 months ending on September 21, 1957. On August 26, 1957, the claimant was involved in an accident with his truck at Lorain, Ohio. On September 19, 1957, the claimant was involved in a second accident with his truck in Jeannette, Pennsylvania. The claimant was discharged following the second accident because of the two accidents and to protect the employer's insurance fund. Applying the holding in the Allen case, above, the court concluded that the claimant was not disqualified for benefits. The court stated:

> " . . . It appears clear that the true reason for the discharge of claimant was, as found by the board, that he was involved in two accidents . . . . We note that the employer does not contend on this appeal that these accidents are part of a series attributable to negligence, occurring periodically and with consistent regularity, which produced substantial financial loss to the employer, thus amounting to willful misconduct within the concept of Allen Unemployment Compensation Case, 168 Pa.Super, 295, 298, 77 A.2d 889. This is not such a case."

In Quinn v. Unemployment Compensation Board of Review (1963), 201 Pa.Super. 152, 191 A.2d 714, the claimant was a taxi driver for the employer for three years and four months until July 7, 1962. During that period of time he had two accidents. On February 12, 1962, he skidded across the divider on the Parkway in Pittsburgh and struck another car. The road was covered with snow. Both drivers were injured. It cost $1,598.00 to repair the taxi. On July 7, 1962, the claimant had his second accident when he skidded through a stop sign and struck another car. Damage occurred to the taxi and the other car. No personal injuries resulted. The streets were wet at the time of the accident. In applying the holding in the Allen case, above, the court held that the factual situation presented

would not permit a finding of misconduct, and therefore the claimant was not disqualified for unemployment insurance benefits. The court stated:

> " . . . Two skidding accidents in a period of three years and four months by a taxicab driver in a big city cannot be called a 'series of accidents occurring periodically and with consistent regularity.' While they might have resulted from negligence, it is an easy thing for a driver to skid upon a snowy or wet highway. Many careful drivers have often done so. We do not believe that the record in this case is sufficient to justify a finding that the driver was guilty of willful misconduct."

We believe the reasoning of the court in the Pennsylvania cases is persuasive, and under the guidelines set forth in the Allen case the claimant in this action clearly was discharged for misconduct. We also believe, however, that in cases of this type no definite set of standards or guidelines can be applied mechanically or universally. Consideration should be given to all the relevant factors in each individual case, including whether or not the accident is isolated or one of a series, the frequency and regularity of the accidents, financial loss to the employer, the degree or character of the negligence, and to other operative circumstances of the accident. The absence or presence of any one of the relevant factors in any given case would not necessarily require or prevent a finding of misconduct.

A material duty owed the employer by the claimant under the contract of employment in the instant case was to drive his truck in a careful manner so as not to be involved in any accidents, attributable to the fault of the claimant, which would cause damage to persons or property. The accidents taken as a whole, and at least as to three accidents individually, which the claimant had in driving his truck, were a substantial breach of that duty. Under the standards set forth in the Allen case, above, this breach was "wilful" in that the claimant had a series of accidents, attributable to negligence, occurring periodically and with consistent

regularity, which produced a substantial financial loss. Such conduct on the part of the claimant evinces a "disregard of the employer's interests." The claimant was therefore discharged for misconduct connected with his most recent work within the meaning of section 1256 of the code.

DECISION

The decision of the referee is affirmed. The claimant is disqualified for benefits under section 1256 of the code. The employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, May 7, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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